



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, RP, OLC, LRE, MNDCT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the *Act* for:

- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65;
- An order for regular repairs pursuant to sections 32 and 62;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- A monetary order for damages or compensation pursuant to section 67.

The landlord called into the teleconference hearing at the appointed time of 9:30 a.m. The tenants called into the hearing at 9:38 a.m. When the parties were all on the line, I advised the parties that the hearing had been scheduled for one hour and that the hearing would conclude at 10:30 a.m. Both the applicant/tenants and the respondent/landlord were advised they would be provided with equal time to provide testimony and submissions regarding each of the items sought in the tenants' Application for Dispute Resolution.

When both parties were present, service of the Notice of Dispute Resolution Proceedings and evidence was confirmed. The landlord acknowledged service of the tenants' Notice of Dispute Resolution Proceedings however the landlord disputed receiving any of the tenants' evidence. The tenants testified they sent their evidence package to the landlord by registered mail to the post office box supplied on the tenancy agreement on May 6, 2021. The tenants testified they were waiting for a piece of evidence from the police before providing their full evidence package to the landlord.

The tracking number for the tenants' mailing of evidence is recorded on the cover page of this decision.

Preliminary Issue – service of tenants' evidence

Pursuant to sections 88 and 90 of the *Act*, documents served to the landlord at the address provided by the landlord by registered mail is deemed served five days after being sent. In this case, I deem the tenants' evidence served upon the landlord on May 11, 2021, five days after being sent on May 5th via registered mail.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure requires that the applicant must, within three (3) days of the Notice of Dispute Resolution Proceedings Package being made available by the Residential Tenancy Branch, serve each respondent with any evidence submitted to the Residential Tenancy Branch. Rule 3.14 requires that the evidence to be relied upon at the hearing must be received by the respondent not less than 14 days before the hearing. Lastly, Rule 3.11 states that the evidence must be served and submitted as soon as reasonably possible and that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In this case, the evidence was deemed received on May 11th, ten days before the hearing. The tenants' reasoning for not sending the evidence to the landlord earlier was due to the police report not being ready until May 5th. I find the tenants were capable of sending the remainder of their evidence upon the landlord within the timelines established under the rules but did not do so. Pursuant to rule 3.17, the tenants could have served the police report late and then sought to have me accept the police report as new and relevant evidence. As a consequence of serving their entire evidence package late and contrary to rule 3.14, the tenants' documentary evidence was excluded from consideration for this decision. Only the tenants' testimony was admitted as evidence.

The tenants testified they received the landlord's evidence and as such, the landlord's documentary evidence was not excluded from consideration for this decision.

Issue(s) to be Decided

Are the tenants entitled to the orders, as sought?

Background and Evidence

Each of the tenants' issues will be addressed in the order indicated on their Application for Dispute Resolution.

❖ Rent reduction

The tenants seek a reduction of \$200.00 per month because their washing machine uses a lot of extra water and electricity. The tenants testified that the landlord purchased a new washing machine for them, however it was defective. It was replaced by the same make and model machine by the landlord, however the issues still remain. According to the tenants, the top-loading washing machine agitates their clothing before water goes in, ripping their laundry in the process. They testified the vendor of the machine says the machine is a "problem model" however they didn't get this in writing.

The landlord counters that the machine is new and not defective. He has the same washer in another of his rental units and they have never had complaints about it. The landlord testified that he has tried to take a look at the washer but when he comes to inspect, the tenants kick him out. The landlord provided an invoice from the vendor showing the vendor took back the first machine and replaced it with the same make and model machine.

❖ Repairs

In their application, the tenants indicate they want the shower diverter and the master bath toilet repaired. During the hearing, the parties turned their minds to compromise and achieved a resolution of this aspect of their dispute. Pursuant to section 63 of the *Act*, I recorded the following settlement:

By consent, the landlord or his son will attend the rental unit on May 29, 2021 between 11 a.m. and 4 p.m. to inspect the shower diverter and master bathroom toilet. The parties agree that the son will be required to return on a future date to complete the repairs. The date will be agreed upon by the parties.

❖ Tenants application for the landlord to comply with the *Act*

In their application, the tenants seek an order that the *"Landlord is to comply with the Act regarding notice of any inspections and any needed repairs without delay."* During the hearing, the tenants stated that the landlord was not doing repairs and was verbally abusive to them. According to the tenants, the landlord was allowed an inspection and the landlord chose not to leave. I asked the tenants to clarify for me what section of the *Act*, regulations or tenancy agreement the landlord was not complying with and the tenants reiterated that they wanted to limit the landlord's access to the rental unit. The

tenants then stated the landlord yells at them. No specific reference to the breaches of the Act were provided by the tenants during their testimony.

❖ Tenants application to suspend the landlord's right to enter the rental unit

In their application, the tenants claim the landlord enters their unit to see the problem but wears his mask improperly (hanging under his nose) during the COVID-19 pandemic. The tenants testified that the landlord is rude and has opened the cabinets under their sink when he was called in to look at the dishwasher. According to the tenants, they have the right to keep the contents of their cabinets private from the landlord when he is performing an inspection.

The landlord submits that the tenants videotaped his inspection of the rental unit made with proper notice, when the tenants complained about an issue with the dishwasher. When he tried to open the cabinet under the sink, he was yelled at and harassed by the tenants. The landlord submits that a landlord should check for issues such as leakages under the sink when performing inspections.

❖ Monetary Orders sought

• Inadequate heat – December 2019/ and firewood

The tenants claim that they went an entire month without heat at the commencement of the tenancy. The landlord tried to fix it but was unsuccessful. They purchased firewood at a cost of \$750.00 and they say the landlord promised to pay them back for the wood but reneged on the agreement. They also claim \$1,100.00 as a half month's rent for the loss of heating.

The landlord testified that the tenants were without heat for a period of 3 days only. The landlord would have supplied the tenants with wood for the 3 days as he has lots of firewood and trees, however the tenants did not request it from him.

• Loss of use of bedroom

The tenants claim that when they moved in, one of the bedrooms smelled of cat urine. One of the tenants had to sleep on the couch. The landlord had to rip out the carpets and put in new laminate flooring where the cat had urinated. The tenants seek a half month's rent as compensation.

The landlord testified that the carpets to the rental unit were all shampooed before these tenants moved in. They both inspected it before signing the contract to enter into the tenancy. The tenants complained so much about the carpets after moving in, the landlord replaced them with wood but only because the tenants complained so much. The landlord denies the carpets smelled of cat urine.

- Screen door replacement/ window screen replacement

The tenants testified they replaced a screen door and a window in the rental unit. Both their front screen and their neighbour's screen were stolen and the tenants replaced their own. The rental unit was also missing a window screen, missing since the commencement of the tenancy. The tenants claim the landlord verbally told them he would replace it, but didn't.

The landlord submits that he is not responsible for the screen door that the tenants claim got stolen. Nor is he responsible for replacing a window screen that wasn't there at the commencement of the tenancy.

- Tenant's claim for harassment and loss of quiet enjoyment

The tenants claim that they should be compensated with a month's rent because the landlord screams at them and calls the police on them. According to the tenants, the landlord has been "cautioned" by the police and the landlord has been contacted by their attorney. The landlord's solution is to tell them to move out.

The landlord submits that he does not harass the tenants. The tenants are the one who harass him when he's at the rental unit performing inspections or doing work on the unit.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

❖ Rent reduction

The tenants claim the washing machine is defective and due to this, they seek a reduction of \$200.00 per month in rent for the extra water and electricity. I find that the tenants have provided insufficient evidence to satisfy me they are entitled to this reduction. While the tenants claim the vendor of the machine admits the machine has faults, they did not call any witnesses to verify this statement or provide a written statement to corroborate this claim. Nor did they provide any evidence to show that they spend \$200.00 per month in additional electricity and water to do laundry, as claimed in their dispute resolution application. In contrast, the landlord has provided evidence in the form of invoices from the washing machine vendor to show he has

made adequate attempts to satisfy the tenants by acknowledging their concerns and replacing the machine with a new one. I find the tenants have not established their claim for a rent reduction. This portion of their claim is dismissed without leave to reapply.

❖ Repairs

The issue of repairs to the rental unit was settled by mediation as follows:

By consent, the landlord or his son will attend the rental unit on May 29, 2021 between 11 a.m. and 4 p.m. to inspect the shower diverter and master bathroom toilet. The parties agree that the son will be required to return on a future date to complete the repairs. The date will be agreed upon by the parties.

❖ Landlord to comply with the Act

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure states:

2.2 Identifying issues on the Application for Dispute Resolution

The claim is limited to what is stated in the application

In their application, the applicant/tenants sought an order that the *“Landlord is to comply with the Act regarding notice of any inspections and any needed repairs without delay.”* During the hearing, the tenants provided a confusing explanation of what the landlord was not complying with. The tenants did not provide a clear objective to this portion of their application, only expressing that the landlord yelled at them or became verbally abusive during an inspection. The tenants did not provide sufficient evidence to satisfy me the landlord entered the rental unit without proper notice as required by section 29 of the *Act* or to perform repairs as required by section 32 of the *Act*. I find insufficient evidence to satisfy me the landlord was not complying with any other relevant section of the *Residential Tenancy Act*, the regulations or the tenancy agreement and I dismiss this portion of the tenants’ application without leave to reapply.

❖ Suspend landlord’s right to enter the rental unit

As stated in Rule 6.6, it is the applicant’s onus to satisfy me that on a balance of probabilities, the facts occurred as the applicant claims. Here, the tenants claim the landlord attended the rental unit while improperly wearing a mask and provided no testimony regarding this issue. They testified that they were upset the landlord opened the doors under their sink while doing an inspection of the dishwasher, however I find this to be a reasonable thing for a landlord to do while performing a dishwasher inspection. A landlord is entitled to look at the spaces where water issues may emanate while performing inspections and the tenants do not have an innate right to deny the landlord his right to inspect those areas. I find the tenants have provided insufficient

evidence to satisfy me the landlord's right to enter the rental unit ought to be restricted and I dismiss this portion of their application without leave to reapply.

❖ Monetary compensation

Residential Tenancy Branch Policy Guideline PG-16 [Compensation for Damage or Loss] states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- 2. loss or damage has resulted from this non-compliance;*
- 3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- 4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

- Inadequate heat and firewood

The tenants claim they were not provided with heating for an entire month at the beginning of the tenancy and had to purchase a cord of firewood to keep warm. The landlord countered that the loss of heat was only for 3 days and that he would have provided firewood to the tenants for the 3 days had the tenants asked him. As stated in rule 6.6 where the applicant bears the onus to prove their version of events is the one to be believed, I find the tenants have not provided sufficient evidence to satisfy me theirs is the version to be preferred. I dismiss this portion of the tenant's claim for compensation as I have only the tenants' testimony to corroborate their version of events.

- Loss of bedroom use

I accept the landlord's testimony that the tenants viewed the rental unit and took possession of it based on their rational assessment of the state of repair and decoration at the time of inspecting it prior to entering the tenancy agreement. If the bedroom were uninhabitable as stated by the tenants, I would expect the tenants to have ensured the carpets were replaced or the bedroom made habitable before entering into the tenancy agreement with the landlord and moving in. I also accept the landlord's assertion that he replaced the tenants' carpets with hardwood laminates as soon as they complained

about it. As I must find there has been a breach of the *Act*, regulations or tenancy agreement before I can award monetary compensation, I find there has been no breach by the landlord. (point 1 of the 4-point test). As such, this portion of the monetary claim is also dismissed.

- Screen door replacement/ window screen replacement

The tenants claim someone stole their screen door together with their neighbour's screen door. While such an occurrence is possible, I find the probability of the theft of multiple screen doors in a neighbourhood to be unlikely. No date of the alleged theft was provided, nor was any reference to a report of theft to the police given to me during the hearing. On a balance of probabilities, I do not find the screen door was stolen or that the landlord should be required to compensate the tenants for it. Likewise, I find the tenants have failed to establish the landlord should be required to compensate them for a window screen that they acknowledge was not there at the commencement of the tenancy. The tenants did not provide sufficient evidence to satisfy me the landlord ever told them he would supply them with one. If the tenants chose to purchase the window screen for use during the tenancy they can do so, but the landlord is not required to supply them with one if there is no agreement between them for him to do so. Both claims are dismissed without leave to reapply.

- Tenant's claim for harassment and loss of quiet enjoyment

Section 28 of the *Act* states:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

This entitlement is discussed in Residential Tenancy Branch Policy Guideline PG-6 [Entitlement to Quiet Enjoyment].

BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of

an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

The tenant's evidence that the landlord harassed them is not substantiated with any evidence other than their own testimony. The example of harassment cited by the tenants during the hearing was an occasion where the landlord opened the doors under the kitchen sink while inspecting the dishwasher at the tenants' request. As I found earlier, the landlord is entitled to inspect this area. The other alleged cause of breaching the tenants' entitlement to quiet enjoyment was that the landlord yelled at them. No date of the occurrence was provided, no context for the encounter given and no description of what was said. Based on the lack of substantiated evidence to corroborate their claim of a loss of entitlement to quiet enjoyment of the rental unit, I must dismiss this portion of the tenants' application without leave to reapply.

Conclusion

By consent, the landlord or his son will attend the rental unit on May 29, 2021 between 11 a.m. and 4 p.m. to inspect the shower diverter and master bathroom toilet. The parties agree that the son will be required to return on a future date to complete the repairs. The date will be agreed upon by the parties.

The remainder of the tenants' Application for Dispute Resolution is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 26, 2021

Residential Tenancy Branch